



37

Office - Supreme Court, U. S.  
FILED

CHARLES ELMORE CROPLEY  
CLERK

IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1943

No. 405

SCHENLEY IMPORT CORPORATION,

Petitioner,

*v.*

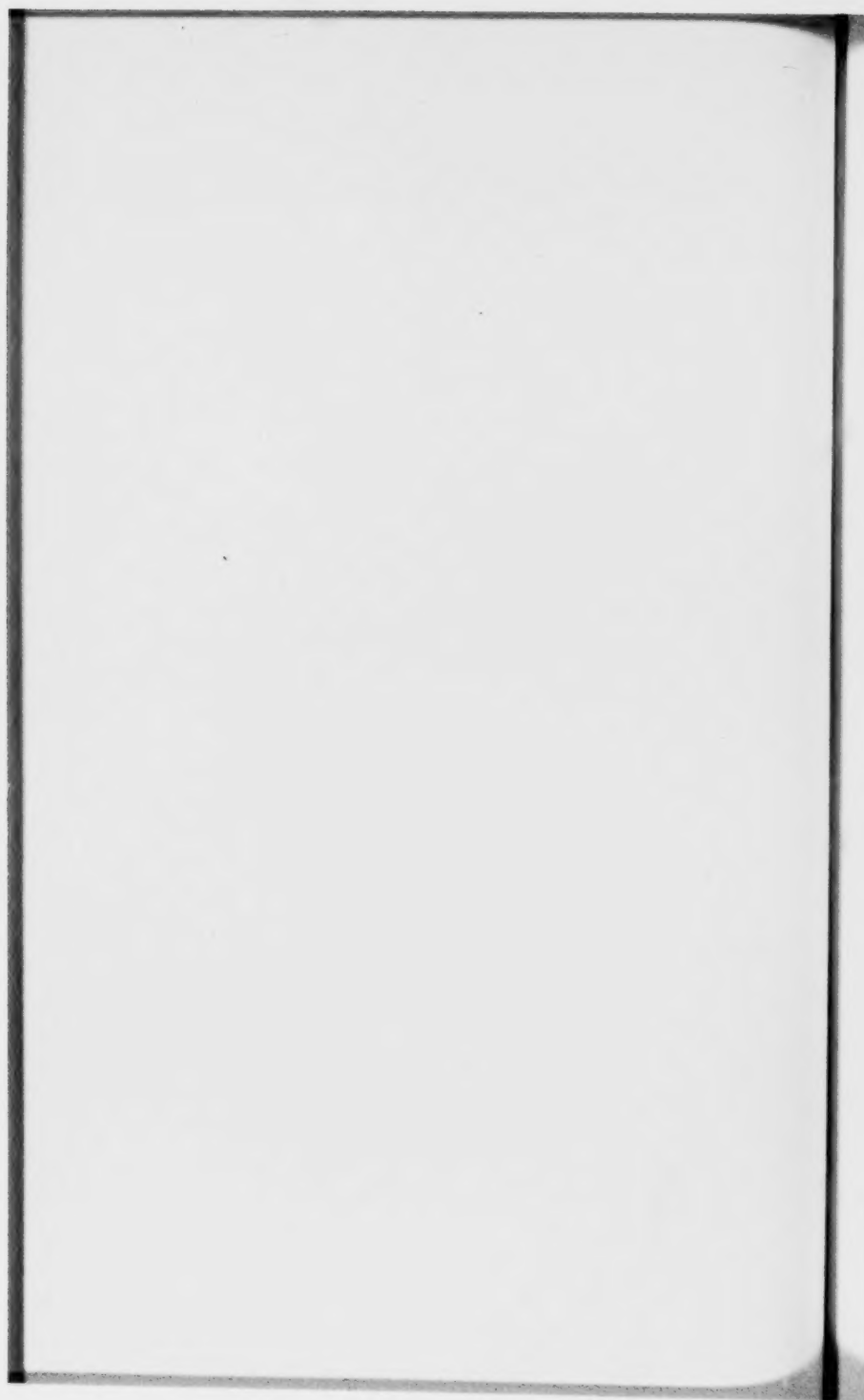
THE UNITED STATES.

PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF CUSTOMS AND PAT-  
ENT APPEALS AND BRIEF IN SUPPORT THEREOF

JOHN D. RODE,  
Attorney for Petitioner.

NORMAN J. MORRISSON,  
Of Counsel.

September, 1943.



## INDEX

---

<i>Petition:</i>	PAGE
Caption .....	1
Opinions below .....	1
Jurisdiction .....	2
Questions presented .....	2
Statutes involved .....	2
Statement .....	2
Rulings of the Court below .....	3
Reasons for granting petition .....	4

<i>Brief:</i>	
Opinions below .....	5
Jurisdiction .....	5
Statement of case .....	5
Argument .....	6
Conclusion .....	15
Appendix .....	16

### CITATIONS.

<i>Cases:</i>	
Arthur v. Homer, 96 U. S. 137, 24 L. ed. 811 .....	9
Beals v. Hale, 4 How. 37, 11 L. ed. 865 .....	9
Bird v. United States, 187 U. S. 118, 47 L. ed. 100..	8
Burke v. United States, 26 C. C. P. A. (Customs) 374, C. A. D. 44 .....	13
Cass County v. Gillett, 100 U. S. 585, 25 L. ed. 585..	10
Cole v. United States, 27 C. C. P. A. (Customs) 201, C. A. D. 85 .....	13
Cook v. United States, 288 U. S. 102, 77 L. ed. 641..	11, 14

	PAGE
D. & B. Import Corp. v. United States, 29 C. C. P. A. (Customs) 65, C. A. D. 172 .....	13
Fussell v. Gregg, 113 U. S. 550, 28 L. ed. 993 .....	9
Garnett v. Bradley (1877) 2 Ex. d. 349, 46 L. J. Ex. 545 .....	10
Hawaii v. Mankichi, 190 U. S. 197, 47 L. ed. 1016 ..	8
Henderson's Tobacco, 11 Wall 652, 20 L. ed. 235 ...	9
Hill v. East and West India Dock Co. (1884), 9 App. cas. 448, 53 L. J. Ch. 842 .....	8
Re Kang-Gi-Shun-Ca, 109 U. S. 556, 27 L. ed. 1030...	10
Rodgers v. United States, 185 U. S. 83, 46 L. ed. 816	15
United States v. Claflin, 97 U. S. 546, 24 L. ed. 1082	10
United States v. Kirby, 7 Wall. 482, 19 L. ed. 278 ...	8, 14
United States v. Lee Yen Tai, 185 U. S. 213, 46 L. ed. 878 .....	14
Van Damm v. United States, 25 C. C. P. A. (Customs) 97, T. D. 49094 .....	13
Washington v. Miller, 235 U. S. 422, 59 L. ed. 295 ..	15
Wolf v. United States, 27 C. C. P. A. (Customs) 188, C. A. D. 84 .....	13
Wood v. United States, 16 Pet. 342, 10 L. ed. 987 ...	9
Wood County v. Lackawanna Iron & Coal Co., 93 U. S. 619, 23 L. ed. 989 .....	9
<i>Statutes:</i>	
Trade Agreements Act, Section 350 (b) .....	12
Article VIII Cuban Trade Agreement of 1934 ....	2, 4, 6, 7, 8, 11
<i>Miscellaneous:</i>	
Beal's Cardinal Rules of Legal Interpretations ....	8, 10
Crawford on Statutory Construction .....	10
Maxwell's Interpretation of Statutes .....	9, 10

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1943

\_\_\_\_\_  
No.  
\_\_\_\_\_

—————◆—————  
SCHENLEY IMPORT CORPORATION,

Petitioner,

v.

THE UNITED STATES.  
—————◆—————

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF CUSTOMS AND PAT-  
ENT APPEALS**

The Petitioner, Schenley Import Corporation, prays that a writ of certiorari issue to review the judgment of the United States Court of Customs and Patent Appeals entered July 6, 1943 reversing a judgment of the United States Customs Court.

**Opinions Below**

The opinion of the United States Customs Court (R. 7, 8, 9) is reported in *Schenley Import Corporation v. United States*, 78 Treas. Dec. Advance Sheet No. 6, page 42, Abstract 47420.

The opinion of the United States Court of Customs and Patent Appeals (R. 16, 17) is reported in 31 C. C. P. A. (Customs) —, C. A. D. 251, 79 Treas. Dec. Advance Sheet No. 8, page 39.

## **Jurisdiction**

The judgment of the United States Court of Customs and Patent Appeals was entered on July 6, 1943 (R. 17, 18). The jurisdiction of this Court is invoked under Section 195 of the Judicial Code as amended (28 U. S. C. A. Section 308).

## **Questions Presented**

(1) Whether Article VIII of the Cuban Trade Agreement of 1934 bound the tax on rum in bottles at the rate in force on the effective date of said trade agreement.

(2) Whether the subsequent enactment of Section 710, Revenue Act of 1938 was intended to contravene Article VIII of said Trade Agreement.

## **Statutes Involved**

The pertinent provisions of the statutes and trade agreement involved are set forth in the appendix (*infra*, pp. 16, 17, 18).

## **Statement**

A shipment of Cuban rum in bottles containing each one gallon or less was imported at the Port of New York and entered for warehouse on July 1, 1938, all of the rum being finally withdrawn for consumption on or before July 11, 1938.

Schedule II of the Cuban Trade Agreement of 1934 provided for rum in bottles containing each one gallon or less.

Article VIII of said Trade Agreement provided that articles enumerated in Schedule II “\* \* \* shall be exempt

from all taxes, fees, charges, or exactions, in excess of those imposed or required to be imposed by laws of the United States of America in effect on the day on which the Agreement comes into force."

The said Trade Agreement became effective as to all items enumerated in Schedule II which were entered for consumption or withdrawn from warehouse for consumption on or after September 3, 1934. (See T. D. 47232.)

The only tax imposed or required to be imposed on rum by laws of the United States in effect on September 3, 1934 was a tax of \$2.00 per proof gallon under the Liquor Taxing Act of 1934.

The tax of \$2.00 per proof gallon remained in effect without increase until passage of the Revenue Act of 1938, when the tax was raised to \$2.25 per proof gallon effective July 1, 1938.

The Collector of Customs applied the rate of \$2.25 per proof gallon.

### **Rulings of the Court Below**

The United States Customs Court held that the rum in question was subject to tax at the rate of \$2.00 per proof gallon and that Section 710, Revenue Act of 1938 did not apply to the rum in the absence of an express intention in said Act to abrogate the terms of the Cuban Trade Agreement.

The United States Court of Customs and Patent Appeals reversed the United States Customs Court and held that the rum was subject to tax at \$2.25 per proof gallon and that the Revenue Act of 1938 was in direct conflict with the Cuban Trade Agreement and being later in date superseded said agreement by clear implication.



### **Reasons for Granting Petition**

1. The United States Court of Customs and Patent Appeals decided an important question of federal law which has not been, but which should be, settled by this Court, namely, the application of Section 710 Revenue Act of 1938 to Article VIII of the Cuban Trade Agreement of 1934.

2. The decision of the United States Court of Customs and Patent Appeals is not in accordance with the great weight of authority as to the application of the doctrine of repeal by implication.

3. The decision of the United States Court of Customs and Patent Appeals leaves meaningless and without scope an important and basic portion of an international agreement.

4. The decision of the United States Court of Customs and Patent Appeals involves a question of wide application involving substantial sums of money in the field of international reciprocal trade agreements.

### **CONCLUSION**

**It is respectfully submitted that the petition for a writ of certiorari should be granted.**

JOHN D. RODE,  
Attorney for Petitioner.

NORMAN J. MORRISON,  
Of Counsel.

